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Aug. 21

Dr. Hilton C. Raley,
Commissioner of Education,
Concord, New Hampshire

Dear Dr. Raley:

In your letter of July 13, 1953, you requested a definite policy statement for the guidance of school boards throughout the state on the problem of open or closed school board meetings. I note that by memorandum of July 29, 1953, Assistant Attorney General Dean informally acknowledged your letter by way of an expression of personal opinion. Subsequently, I have discussed this matter with you orally and you have reaffirmed your request for a formal opinion on the subject. Accordingly, the following expression of opinion is rendered to you in your capacity as Commissioner of Education.

The State Board of Education, by Revised Laws, chapter 134, section 5, gives supervisory authority for direction of school boards. The statute expressly authorizes you to promulgate rules and regulations applicable to school boards and I am advised by you that to date none of your rules and regulations has specified the manner of conducting meetings of school boards throughout the state. This supervisory and regulatory authority is not unique to New Hampshire and regulations of the Commissioner of Education have been promulgated in many other jurisdictions as evidenced in 56 Corpus Juris, Schools and School Districts, s. 204, and 73 Corpus Juris Secundum, Schools and School Districts, s. 126.

By section 15 of Revised Laws, chapter 135, school boards themselves, subject to your supervision, may prescribe regulations affecting the management, classification and discipline of their own schools, which become effective upon recording by the district clerk after a copy has been given to the teachers and read in the schools. Furthermore, school boards are required by Revised Laws, chapter 135, section 28 to send copies of their annual reports to the State Board of Education, and individual teachers removed for cause may appeal directly to you under Revised Laws, chapter 135, section 32.

Mr. Milton C. Bulcy

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Thus, there appears to be no express statutory requirement as to the form, conduct of meetings, or status as public records of the minutes of school board meetings. Likewise, as indicated above, no regulations have yet been promulgated bearing on this matter.

School boards may hold open (public) or executive (private) sessions in the exercise of their respective individual discretion. Official business of the school board may be transacted in either type of session. Obviously, the minutes and conduct of a public meeting are not here in question, the meeting being public and the action of the board being for that reason a matter of notorious fact.

However, in so far as any action is taken at executive (private) session, the minutes of such a meeting must contain an indication of the fact that a quorum of the board was present and a record of the actual votes taken (cf. 56 Corpus Juris, Schools and School Districts, s. 211), so that the minutes show that the requisite number of votes were cast in favor of each proposition adopted or approved. This is not to say, however, that it is necessary that the debate occurring in executive session must be included in the minutes, nor that anything more than the action actually taken in executive session shall be ^{made} a matter of public record.

Thus, for example, if an individual school board desires to meet in executive session for the purpose of discussing the status of a particular teacher, it may so meet and if no action is taken at that session it is not necessary that the minutes show anything other than that a meeting took place on that date and who was present.

The rule that all discussion at an executive session should be a matter of public record would stultify the need of free debate in private which often occurs. It should be noted that in our proceedings to dismiss a teacher, the statute (Revised Laws, chapter 135, section 13) requires prior notice of cause and a full and fair hearing. It is always open to the chairman of each board (or its temporary presiding officer) to go "off the record" in the discussion of matters of a tender nature so long as the eventual action of the board, if any, is appropriately entered in the minutes which are open to the public.

Sincerely,

Louis C. Wyman
Attorney General

LSW:EP

cc Robert Buckley, Esq
Chairman